

§ 40.189

procedures of §§ 40.153, 40.171, 40.173, 40.179, 40.181, and 40.185, as appropriate.

(C) As the laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen and/or to determine that the primary specimen meets appropriate substitution criteria, report your result to the MRO on a photocopy (faxed, mailed, scanned, couriered) of Copy 1 of the CCF.

(D) If the test of the primary specimen reconfirms the adulteration and/or substitution finding of the split specimen, as the MRO you must report the result as a refusal to test as provided in paragraph (a)(2) of this section.

(E) If the test of the primary specimen fails to reconfirm the adulteration and/or substitution finding of the split specimen, as the MRO you must cancel the test, following procedures in paragraph (b) of this section.

(d) *Category 4:* The laboratory failed to reconfirm one or more but not all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted. As the MRO, in the case where the laboratory reconfirmed one or more of the primary specimen result(s), you must follow procedures in paragraph (a) of this section and:

(1) Report that the split was also reported as being invalid, adulterated, and/or substituted (as appropriate).

(2) Inform the DER to take action only on the reconfirmed result(s).

(e) *Category 5:* The split specimen was not available for testing or there was no split laboratory available to test the specimen. As the MRO, you must:

(1) Report to the DER and the employee that the test must be cancelled and the reason for the cancellation;

(2) Direct the DER to ensure the immediate recollection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection; and

(3) Notify ODAPC of the failure to reconfirm using the format in Appendix D to this part.

(f) For all split specimen results, as the MRO you must in Step 7 of Copy 2 of the CCF:

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(1) Report split specimen test results by checking the “Reconfirmed” box and/or the “Failed to Reconfirm” box, or the “Test Cancelled” box, as appropriate.

(2), Enter your name, sign, and date.

(3) Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, see § 40.163) to the employer and keep a copy for your records. Transmit the document as provided in § 40.167.

[73 FR 35973, June 25, 2008, as amended at 75 FR 59108, Sept. 27, 2010]

§ 40.189 Where is other information concerning split specimens found in this regulation?

You can find more information concerning split specimens in several sections of this part:

§ 40.3—Definition.

§ 40.65—Quantity of split specimen.

§ 40.67—Directly observed test when split specimen is unavailable.

§§ 40.71–40.73—Collection process for split specimens.

§ 40.83—Laboratory accessioning of split specimens.

§ 40.99—Laboratory retention of split specimens.

§ 40.103—Blind split specimens.

§ 40.153—MRO notice to employees on tests of split specimen.

§§ 40.193 and 40.201—MRO actions on insufficient or unavailable split specimens.

APPENDIX D TO PART 40—REPORT FORMAT FOR SPLIT SPECIMEN FAILURE TO RECONFIRM.

Subpart I—Problems in Drug Tests

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) As an employee, you have refused to take a drug test if you:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a));

(2) *Fail to remain at the testing site until the testing process is complete; Provided,* That an employee who leaves the testing site before the testing process